

**Branch 529, National Association of Letter Carriers, AFL-CIO and Susan Ellyn Tudor.** Case 7-CB-9937(P)

November 30, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

On September 29, 1994, Administrative Law Judge William F. Jacobs issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.<sup>1</sup>

For the reasons set forth below, we affirm the judge's finding that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to provide the Charging Party with copies of her grievance forms.

**I. FACTS**

The National Association of Letter Carriers (NALC), AFL-CIO, by virtue of Section 9(a) of the Act, has been at all material times the exclusive collective-bargaining representative of a unit of all full-time and regular part-time city letter carriers employed by the Employer, the United States Postal Service, at various facilities throughout the United States (including the Port Huron, Michigan facility involved in this case). NALC maintains and enforces a collective-bargaining agreement with the Employer covering the above unit. NALC itself, however, is not a party to this proceeding. Rather, Branch 529, NALC is the Respondent. The Respondent is a labor organization within the meaning of Section 2(5) of the Act. It is affiliated with NALC, and is NALC's designee for the purpose of processing grievances through step 2 of the contractual grievance procedure.

Charging Party Susan Tudor was a transitional employee (TE)<sup>2</sup> at the Employer's Port Huron facility. Her TE assignment was due to expire on November 21, 1993.<sup>3</sup> On November 5, she filed a grievance with

her union steward, claiming that the Employer had improperly failed to merge her most recent entrance examination score on the current register of applicants for permanent career letter carrier positions in accordance with a July 30 memorandum of understanding between the Employer and NALC (set forth in full in the judge's decision). The grievance was summarily denied on the grievance form itself, at step 1 of the grievance procedure, and was appealed to step 2 on November 9.

On November 17, the Respondent's president, Ken Harris, engaged in a step 2 discussion of Tudor's grievance with the Employer's Port Huron officer in charge, Jill Moreillon. They agreed on a settlement of Tudor's grievance, under which she was placed on the Port Huron letter carrier register of applicants retroactively to October 15, for consideration along with other applicants for a career position.

Also on November 17, Moreillon notified Tudor in writing that, due to an operational need to reduce the complement of TE letter carriers, Tudor would not be reappointed to a subsequent TE assignment following the expiration of her current one on November 21.

On November 19, Moreillon and Harris signed the written settlement of Tudor's grievance, to which they had agreed on November 17. Harris mailed a copy of the settlement agreement to Tudor at her home address.

On November 22 (the day after the expiration of her TE assignment), Tudor telephoned Harris after receiving the November 19 settlement agreement, and asked him to provide her with copies of her "grievance forms" so that (as she told Harris) she could try to get her job back. Tudor did not explain to Harris, nor did Harris ask Tudor, why Tudor felt that she needed copies of her grievance forms in order to get her job back. Harris testified that at the time he knew nothing about Tudor's planned unfair labor practice charge against the Employer, and that he did not know why Tudor believed that she needed the requested documents.<sup>4</sup>

Harris testified that although employees have frequently asked him for information about the posture and processing of pending grievances, he could not recall anyone, before Tudor, requesting copies of their grievance forms. In any event, Harris told Tudor that he did not know if she could receive these copies, that he would have to "check," and that he would let her know.

As far as the record shows, Tudor's grievance file consisted of (1) her November 5 step 1 grievance, on a one-page NALC "Grievance Worksheet," and the

<sup>1</sup> We shall modify the judge's recommended Order to require that, if the Employer wishes, the notice shall also be posted at the Employer's Port Huron facility.

<sup>2</sup> Transitional employees are noncareer unit employees who serve on limited-term assignments of up to 359 calendar days. These assignments can be, and usually are, renewed upon expiration, following a mandatory 6-day break in employment.

<sup>3</sup> All dates are 1993, unless otherwise stated.

<sup>4</sup> Tudor testified that she believed that she had been denied reappointment to a TE position in retaliation for her filing of the grievance. She filed an unfair labor practice charge against the Employer based on this belief, but she withdrew the charge in January 1994, and was rehired as a letter carrier the next month, in February 1994.

Employer's November 5 denial of the grievance at step 1, on the bottom of the same grievance worksheet; (2) the Respondent's November 9 appeal of this denial to step 2, on a one-page NALC "Standard Grievance Form"; and (3) the November 19 one-page written settlement of the grievance, signed by Harris and Moreillon, a copy of which had already been provided to Tudor by Harris.

Harris, the Respondent's president, telephoned the office of the NALC regional business agent, and spoke to the business agent's administrative assistant, Jim Korolowicz. Harris asked him if the Respondent had to give union documents to a grievant. Korolowicz told Harris that he did not have to. He told Harris that Harris had no obligation other than to give Tudor a copy of the grievance settlement—which Harris had already done. Korolowicz also told Harris that "it's the policy that we stay consistent with, that we do not give out copies of grievance forms." Korolowicz, however, left it to Harris' discretion whether to give Tudor the requested documents.

In a letter dated November 30, Harris wrote to Tudor, stating in full:

Dear Sue:

As per your request for grievance forms. These are the property of the NALC Branch 529. I cannot release these documents to you.

I suggest you request management's copy and their step 1 form.

Cordially  
Ken Harris

In a letter dated and postmarked December 1, Tudor wrote to Harris, stating in pertinent part:

Please be advised that I am officially requesting under the Privacy Act Requirements, Privacy Act of 1974, that I be provided with a copy of the step one grievance and step two denial<sup>5</sup> with regards to my grievance.

Citing a particular provision of the employee labor relations manual, Tudor asserted in this letter that she was permitted, *inter alia*, to be informed whether the Postal Service had records filed or cross-indexed under her name, and to have access to and have copies made of most such records pertaining to herself.

Tudor's letter continued:

This information is required for a charge that is being filed with the United States [sic] Labor Relations Board. It is imperative that this information be provided to me in a timely manner. If I have not received this information within seven

working days from the date of this letter I will be forced to add another charge to the one already being filed with regards to being denied this information.

Harris did not provide Tudor with the requested information. He testified that he denied Tudor's request for copies of her step 1 grievance worksheet and the Respondent's step 2 standard grievance form (appealing the Employer's step 1 denial of the grievance), "upon the advice of our national business agent," because "they are property of the union." He further testified that he did not know (1) why Tudor needed the requested documents; (2) that the charge referred to in Tudor's letter as being filed with the Labor Relations Board was being filed against the Employer; and (3) what Tudor was referring to by "step two denial," because Harris considered the grievance settlement to have essentially *sustained* Tudor's grievance. Harris further testified that it would have mattered to him why Tudor wanted the documents, because he would have talked to his national business agent and discussed the merits of her request. Harris also testified that he was not aware of any provisions in the collective-bargaining agreement, the labor relations manual, or the Respondent's constitution and bylaws<sup>6</sup> that either required the Respondent to give Tudor the requested documents or prohibited it from doing so. Finally, he testified that the Respondent's practice was to provide grievants with copies of the settlements or denials of grievances, and that he could not recall anyone other than Tudor asking for a copy of the standard grievance form.

Korolowicz testified that NALC's consistent, albeit unwritten, policy is that "we do not provide grievants with standard grievance forms, Step 3 appeals," because "[i]t's our opinion that it's the property of the union and there is no rule governing us to give it. We just don't give it." Korolowicz explained that NALC's policy against giving out copies of grievance forms was consistently conveyed to any branches that called the NALC regional office for advice on such a matter, but "[i]f they don't call for our advice, I wouldn't have any idea of knowing what they're doing. I can only tell you what happens if they call us and what's the policy in our office at the Step 3 level." Korolowicz further explained that while his regional office becomes directly involved only at step 3 and beyond in the grievance-arbitration procedure for branches in Michigan, Indiana, and Kentucky, the above policy "concerns all steps."

## II. ANALYSIS AND CONCLUSION

The judge found that Tudor's request for copies of her first and second step grievances was reasonable

<sup>5</sup>Tudor at this point believed that her grievance had been denied at step 2 on November 17, and then settled on November 19.

<sup>6</sup>None of these documents are in evidence.

under the circumstances, and that the Respondent violated Section 8(b)(1)(A) of the Act in refusing to provide Tudor with the requested documents. We agree.

The fundamental general principles that govern this case have recently been restated and affirmed by the Board in *Letter Carriers Branch 6070 (Postal Service)*.<sup>7</sup> A union owes all unit employees the duty of fair representation, which extends to all functions of the bargaining representative. When a union's conduct toward a unit member is arbitrary, discriminatory, or in bad faith, it breaches its duty of fair representation. But a union must be allowed a wide range of reasonableness in serving the unit employees, and any subsequent examination of a union's performance must be "highly deferential."<sup>8</sup> Mere negligence does not constitute a breach of the duty of fair representation. And a union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational.<sup>9</sup>

Applying these principles to the facts in this case, we find, in agreement with the judge, that the Respondent acted arbitrarily in refusing to provide Tudor with copies of her grievance forms, and that the Respondent has thus breached its duty of fair representation to her and violated Section 8(b)(1)(A) of the Act.

The Respondent first argues that it did not owe Tudor a duty of fair representation. The Respondent argues that because Tudor's TE appointment had expired on the day before she made her request to the Respondent for copies of the documents in question, and because she had been told by the Employer that she would not be appointed to another term,<sup>10</sup> she was no longer an employee or unit member at the time of her request, and thus not owed a duty of fair representation by the Respondent. We find no merit in this argument.

Section 2(3) of the Act provides that "[t]he term 'employee' shall include . . . any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice . . . ." (Emphasis added.) On November 22, after being notified (1) that her grievance had been settled and (2) that she would not be reappointed to another follow-on 359-day term as a TE letter carrier, Tudor called Harris and asked for copies of her grievance forms, telling him that she needed them so that she could try to get her job back. A week

later, on December 1, Tudor wrote to Harris, renewing her request for copies of her grievance forms, and advising him that she needed them for a charge that she was filing with the "United States [sic] Labor Relations Board." Just on the basis of those two communications alone, we find that Tudor reasonably and effectively asserted to Harris that she was an individual whose work had ceased as a consequence of or in connection with her grievance, and that she was therefore well within the scope of the term "employee" under Section 2(3).<sup>11</sup> The Respondent is certainly not being required to tread new ground in meeting its duty of fair representation to Tudor under these circumstances. As succinctly stated by the Seventh Circuit Court of Appeals, "[u]nions represent ex-employees all the time when trying to obtain their reinstatement under an agreement, or when pressing other claims connected with their departures."<sup>12</sup>

We agree with the judge that the Respondent breached its duty of fair representation to Tudor by refusing to provide her with copies of her grievance forms. In so finding, we note especially that (1) the grievance documents in question specifically pertained to the grievance filed by Tudor herself; (2) her legitimate general interest in obtaining copies of these documents was therefore self-evident on that basis alone; (3) her asserted legitimate particular interest in obtaining the documents (trying to get her job back) was effectively and reasonably communicated to Harris; (4) the Respondent has raised no substantial countervailing interest in refusing to provide Tudor with copies of her

<sup>11</sup> Member Cohen rejects the Union's defense, albeit for different reasons. In this regard, he notes that Tudor was denied reappointment on November 17 because of an operational need to reduce the number of TE letter carriers. There is nothing in the record to establish that this was a consequence of, or in connection with, the grievance. Thus, he disagrees with the majority's rationale. In his view, the important point is that the grievance was filed and settled at a time when Tudor was a unit employee. In these circumstances, Member Cohen agrees that the Respondent must represent her fairly, even if this extends the representation into postemployment periods.

<sup>12</sup> *Merk v. Jewel Cos.*, 848 F.2d 761, 765 (1988). See also *Caputo v. Letter Carriers*, 730 F.Supp. 1221, 1233 fn. 10 (E.D.N.Y. 1990) (former employees who have left work because of a labor dispute or unfair labor practice are still considered employees and are owed the duty of fair representation).

In this regard, Harris first testified, on redirect examination, that the Respondent had an obligation to continue to represent employees who have been terminated for cause "even though they are no longer an employee of the post office." Harris further testified initially that the Respondent also had an obligation to represent employees who have been removed or terminated for nondisciplinary reasons. On further redirect questioning, however, Harris modified his testimony by denying that the Respondent had an obligation to represent TEs who quit or are not rehired. Harris further testified that because Tudor was not reappointed to a follow-on TE appointment, "under the collective bargaining agreement and the arbitrator's award" the Respondent had no obligation to represent her. Neither the collective-bargaining agreement nor any arbitration awards are in evidence, however, and Harris was unable to be more specific about this matter.

<sup>7</sup> 316 NLRB 235 (1995). See also *Mine Workers Local 17*, 315 NLRB 1052, 1062 (1994).

<sup>8</sup> 316 NLRB at 236, quoting in part *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 78 (1991).

<sup>9</sup> Id., citing *Air Line Pilots Assn. v. O'Neill*, supra; *Steelworkers v. Rawson*, 495 U.S. 362, 376 (1990); *Vaca v. Sipes*, 386 U.S. 171, 177, 190 (1967); *Miranda Fuel Co.*, 140 NLRB 181 (1962).

<sup>10</sup> As seen, however, Tudor was rehired by the Employer 3 months later, in February 1994.

settled grievance; (5) Harris' simple assertion to Tudor that her grievance forms were the Respondent's "property," and that Harris could not "release these documents" to her raises no substantial reason for Harris' asserted inability to provide Tudor with *copies* of the documents, which are all that Tudor ever asked for (indeed, Harris' suggestion to Tudor that she ask the Employer for *a copy* of the requested documents shows that Harris was well aware that Tudor was only asking for copies of her grievance forms, not the originals); and finally (6) the extremely limited amount of documentation (two pieces of paper) sought by Tudor, and the corresponding ease with which the Respondent could have provided her with those pieces of paper.

Applying the principles set forth above to these facts, we find that the General Counsel has established that the Respondent was indeed acting arbitrarily, in breach of its duty of fair representation, in denying Tudor's request for her grievance forms.<sup>13</sup> We are unable to fit the Respondent's refusal to provide Tudor with copies of the forms within even the wide range of reasonableness that must be allowed a statutory collective-bargaining representative. Even the Respondent's arguably good-faith, nondiscriminatory reliance on NALC's asserted "policies"<sup>14</sup> of not providing grievants with standard grievance forms and not giving out copies of grievance forms, and the Respondent's ignorance of the underlying reasons for Tudor's request cannot rescue its conduct from drifting beyond the borders of reasonableness, into arbitrariness. This is particularly so in light of the fact that, notwithstanding NALC's asserted policies, Korolowicz ultimately left it up to Harris' *discretion* whether to grant Tudor's request for copies of her grievance forms, and that in exercising this discretion, Harris relied simply on the wobbly footings of the "advice of our national business agent," and the assertion that Tudor's grievance forms were the "property" of the Respondent.

Thus, we find that in light of the factual and legal landscape at the time of the Respondent's denial of Tudor's request, the Respondent's conduct was sufficiently outside the range of reasonableness as to be accurately characterized as arbitrary, and that by such

<sup>13</sup> See *Law Enforcement & Security Officers Local 40B (South Jersey Detective Agency)*, 260 NLRB 419 (1982) (failure to provide employee with copies of collective-bargaining agreement and health and welfare plan falls short of fulfilling duty of fair representation and constitutes violation of Sec. 8(b)(1)(A) of Act).

<sup>14</sup> Although the complaint does allege that the Respondent refused to provide Tudor with her requested copies of her grievance forms for reasons that are "unfair [and] invidious" as well as "arbitrary," there is ultimately no claim advanced, and in the final analysis no showing made, that the Respondent acted in bad faith or discriminatorily in denying Tudor's request for copies of her grievance forms.

conduct the Respondent violated Section 8(b)(1)(A) of the Act.<sup>15</sup>

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Branch 529, National Association of Letter Carriers, AFL-CIO, Port Huron, Michigan, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraph.

"(c) Deliver to the Regional Director for Region 7 signed copies of the notice in sufficient number for posting by the Employer at its Port Huron facility, if it wishes, in all places where notices to employees are customarily posted."

2. Substitute the attached notice for that of the administrative law judge.

<sup>15</sup> See *Teamsters Local 282 (Transit-Mix Concrete)*, 267 NLRB 1130, 1131 (1983) (affirmative decision not to deviate from "normal practice"; "never done that [before] . . . no need to do it now," is not a rational basis for deciding specifically not to notify laid-off drivers of arbitration award directly affecting their seniority and recall rights, and thus constitutes arbitrary conduct in breach of duty of fair representation and in violation of Sec. 8(b)(1)(A) of Act), enfd. 740 F.2d 141 (2d Cir. 1984).

## APPENDIX

### NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to provide copies of grievance forms to Susan Elyn Tudor or to other employees represented by Branch 529, National Association of Letter Carriers, AFL-CIO, when requested to do so.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide Susan Elyn Tudor with copies of the grievance forms requested by her.

### BRANCH 529, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

*Andre F. Mays, Esq.*, for the General Counsel.  
*Peter D. De Chiara, Esq. (Cohen, Weiss & Simon)*, of New York, New York, for the Respondent.

## DECISION

WILLIAM F. JACOBS, Administrative Law Judge. This case was tried before me on June 2, 1994, in Detroit, Michigan. The complaint issued on February 9, 1994, based on a charge filed by Susan Ellyn Tudor (Tudor), an individual, on December 21, 1993, against Branch 529, National Association of Letter Carriers, AFL-CIO (Respondent or the Union), alleging that Respondent violated Section 8(b)(1)(A) of the Act by refusing to provide Tudor with copies of the grievance forms she had executed in connection with a grievance she had filed earlier against her Employer, the United States Postal Service (the Employer or Postal Service). The Union filed a timely answer in which it denied the commission of any unfair labor practices.

All parties appeared at the hearing and were afforded full opportunity to be heard and present evidence and argument.

On the entire record in this case, from my observation of the witnesses, and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT<sup>1</sup>

Tudor was hired by the U.S. Postal Service, Port Huron, Michigan, as a transitional employee-letter carrier (TE) on November 28, 1992. As a transitional employee, her assignment was limited to a period of 359 days. Hers was due to expire November 21, 1993.<sup>2</sup> Under the existing collective-bargaining agreement, on expiration of each term of employment, transitional employees were forced to take a 6-day break in service, after which they were usually reappointed for another term.

The summer of 1993 was extremely busy at the Port Huron location. The transitional employees, including Tudor, were working 12 hours per day, 6 days per week, and sometimes an additional 4 hours some Sundays. Management was aware of this situation and was attempting to hire additional help either through transfers from other branches or by canvassing the registers, that is calling applicants whose names appeared on existing registers to come in for interviews. Applicants chosen from the top of the register, following their interviews, go through drug screening, take physicals and driving examinations, and then are hired if the postmaster so decides.

As a result of the need for additional help, Tudor and other transitional employees approached management, seeking permanent career employment as letter carriers. On July 30 the following memorandum was posted:

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES POSTAL SERVICE  
AND  
THE NATIONAL ASSOCIATION OF  
LETTER CARRIERS, AFL-CIO

In the interest of enhancing career employment opportunities for NALC transitional employees, the Postal Service and the NALC agree as follows:

<sup>1</sup> Following amendment of the complaint of the hearing, Respondent admitted jurisdiction and its status as a labor organization under the Act.

<sup>2</sup> Hereinafter, all dates are in 1993 unless noted otherwise.

1. NALC transitional employees (TEs) who have completed 180 days of employment as a TE and are still on the TE rolls may take the entrance examination for career letter carrier positions upon request. Only one such opportunity will be provided each eligible TE pursuant to this memorandum.

2. Eligible TEs who wish to take the examination must submit their request to the appropriate personnel office. The examination will be administered to eligible TEs who have submitted a request on a periodic basis, but no less than once each quarter.

3. The TEs' exam results will be scored, and passing scores will be merged with the existing letter carrier register. Thereafter, normal competitive selection procedures will apply in making career letter carrier appointments.

4. Eligible TEs who already have a passing test score on the letter carrier register may take the examination again pursuant to this memorandum and will have the option of merging the new test score with the existing register in lieu of their old test score.

Sherry A. Cagnoli  
Manager  
Contract Administration  
(NALC/NRLCA)  
Labor Relations  
July 30, 1993

Vincent R. Sombrotto  
President  
National Association of  
Letter Carriers, AFL-CIO

On September 30, Tudor took the examination again and obtained a higher score than she had the first time she took it, 5 years before. Unfortunately, the same day she took the examination, a new register was drawn and her name was not on it.

On October 15, Tudor was sent a confirmation letter that she had passed the test and had been placed on the existing register for the clerk carrier's position at the Port Huron post office. This was the register dated September 30. It was Tudor's understanding that under the July 30 memorandum, a new register should have been drawn, closer to the date her name was placed on it, i.e., October 15. Despite her dissatisfaction, Tudor did not immediately do anything about it.

On October 29, Margo McKibben, another TE, filed a grievance complaining:

Exam results have not been merged with existing letter carrier register, therefore normal competitive selection procedures cannot be followed.

McKibben requested that:

Results be merged as per memorandum effective 10-15-93.

On November 5, Tudor filed a grievance with her union steward, Steve Miller. She explained the basis for her grievance and inasmuch as it was admittedly the same as McKibben's, Miller did not describe it but simply wrote in the word "same" and attached it to McKibben's grievance form. He then explained to Tudor that her grievance would be denied at step 1 because her supervisor that day, Ron Newton, had no authority to do anything with it, so he was denying it just to move it on. In the ordinary course, a step

1 grievance, which is denied, is moved to step 2 in 10 or 15 days. Miller presented McKibben's and Tudor's grievances to Ken Harris, president of Branch 529 for processing at step 2.

On November 9, Harris filed a step 2 grievance form to appeal Tudor's grievance to the officer in charge, Jill Moreillon. The grievance states:

The grievant has taken [the] test to become a PTF carrier and her score has not been merged on existing roster.

The memorandum requires test scores be merged on existing rosters. This admittedly has not been done. This is a violation to not honor memorandum.

The corrective action requested:

Ms. Tudor be merged on existing PTF roster retroactive to Oct. 15, 1993 and Ms. Tudor be interviewed for a PTF position.

Any other remedy deemed necessary.

According to Harris, Tudor's grievance was sustained at the second step.

On November 17, Harris met with Moreillon to discuss McKibben's and Tudor's grievances and to support their positions. Moreillon advised Harris that she would get back to Harris with a decision later, according to Harris' testimony. Moreillon was not called to testify.

The same day, November 17, Moreillon wrote the following letter to Tudor:

Your appointment as a Transitional Letter Carrier expires on November 21, 1993. At the current time it is operationally necessary for us to reduce our complement of Transitional Letter Carriers.

Therefore you will not be reappointed. Your last day of work will be November 20, 1993.

At about 6 p.m., after McKibben and Tudor had completed their rounds and returned to the post office, McKibben asked Harris what had occurred at his step 2 meeting with Moreillon. Harris replied that Moreillon had denied the grievances at the second step and that he could now go to personnel and get the information he needed to proceed to the next step.

When Tudor arrived at home on the evening of November 17, the letter from Moreillon was there. She already knew that her grievance had been denied earlier that day and assumed that she had been refused reappointment because she had filed the grievance. She also assumed that the reasons why her grievance had been denied had been put in writing on the step 2 grievance form.

When the number of TEs are increased or decreased the postmaster of the Port Huron post office and the president of Branch 529 customarily meet to determine the division of hours to be made among the TEs. Ronald Dombroski, the postmaster, met with Ken Harris on November 18, the day after Tudor received the letter from Moreillon denying her reappointment, and signed a memorandum of understanding. This document stated:

The maximum number of Transitional Letter Carriers allowed in Port Huron under the DSSA are 10. The of-

fice work hour cap for these TEs is 300 per week broken down as follows.

The document then listed eight TEs by name, divided into two units with 113 hours assigned to the three TEs in the north unit and 187 hours assigned to the five TEs in the south unit. Thus, each TE was to receive approximately 37 hours of work per week. The agreement was to become effective November 27, 1993. If the maximum 10 TEs were kept on the payroll, each would have received 30 hours per week.

On November 19, Moreillon forwarded to Harris a proposed settlement of Tudor's grievance which states:

The grievant was placed on the Port Huron register on 10-15-93. When she appears on future hiring worksheets generated by the personnel office, she will be considered along with the other applicants for a career position.

On receipt of the proposed grievance settlement, Harris appended the following handwritten note:

Sue:

Please note. We cannot force management to hire. We can make sure they follow process correctly. According to our NBA, this is being done.

Both Moreillon and Harris signed this grievance settlement as sustained since in Harris' view the placement of Tudor's name on the October 15 roster was precisely what she had requested as had McKibben. Copies of the settlement agreements were supplied to McKibben and Tudor.

On or about November 22, after receiving her copy of the settlement agreement, Tudor called Harris on the telephone and asked him if she could have copies of her grievance forms so she could try to get her job back. Harris promised to check into the matter and get back to her.

Following Tudor's discussion with Harris, Harris contacted James Korolowicz, one of his superiors, to ask about Tudor's request. Korolowicz advised Harris that he did not have to give Tudor a copy of her grievance but it was up to Harris, whether or not he wanted to do so.

Following his discussion with Korolowicz, on November 30, Harris wrote a letter to Tudor which states:

Dear Sue:

As per your request for grievance forms. These are the property of the NALC Branch 529. I cannot release these documents to you.

I suggest you request management's copy and their step 1 form.

On December 1, Tudor wrote a letter to Harris requesting copies of her step 1 grievance and the step 2 denial. She explained that she needed these documents in order to file a charge with the National Labor Relations Board (NLRB). She requested further that the information requested be provided to her within 7 working days of the date of her letter. She closed with the admonition that she would file a charge against the Union if she were denied the information requested.

Harris received Tudor's request on or about December 2, but decided not to provide her with the information requested

because there was no requirement anywhere in writing that he had to do so and because no one had ever made such a request before.

Despite the fact that she did not receive the documents from the Union which she intended as evidence to support her unfair labor practice charge against the Respondent, Tudor proceeded to file her charge. Her theory of the case was based on the fact that of all of the TEs working at the time, she was the only one who was not reappointed and she was denied reappointment the same day she filed the grievance. She therefore concluded that she was denied reappointment because she had filed a grievance. If her allegation were proven, there would have been a prima facie unfair labor practice case. To help win her case with the NLRB, Tudor felt that as evidence she would need copies of her grievance to prove she did, in fact, file a grievance and, depending on the language contained on the step 2 form, perhaps prove the reasons why her reappointment was denied. If the unfair labor practice charge proved meritorious, Tudor would have gotten her job back.

Tudor's charge was eventually found by the Region to be without merit and she withdrew it. In February 1994, Tudor was reappointed to her job with the post office.

#### Analysis and Conclusion

I find that Tudor's request for copies of her first and second step grievances, under the circumstances of this case, was a reasonable one and the Union should have complied with her request. A union owes its membership a certain degree of support when a dispute arises between employees it is supposed to represent and their employer. To refuse the very minimal request from an employee-member for a copy of her own grievance strikes me as wrong;<sup>3</sup> to tell her to seek a copy of this grievance from the employer, the very party against whom she is proceeding strikes me as arrogant. I find that Respondent Union violated Section 8(b)(1)(A) when it refused to provide a copy of her grievance to Tudor.

#### CONCLUSIONS OF LAW

1. United States Postal Service is subject to the jurisdiction of the National Labor Relations Board by virtue of 39 U.S.C. § 1209(a).

2. Respondent is a labor organization as defined in Section 2(5).

3. By refusing to provide to Susan Ellyn Tudor copies of her grievance forms, Respondent has failed to represent her for reasons that are unfair, arbitrary, and invidious and has breached the fiduciary duty it owes the employees it represents.

<sup>3</sup> Past practice is irrelevant.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act. I recommend that Respondent provide to Susan Ellyn Tudor copies of the grievance forms she was denied in the instant case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

#### ORDER

The Respondent, Branch 529, National Association of Letter Carriers, AFL-CIO, Port Huron, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from refusing to provide to Susan Ellyn Tudor copies of her grievance forms or by any like or related manner restraining or coercing Tudor or any other employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide to Susan Ellyn Tudor copies of the grievance forms discussed in the instant proceedings.

(b) Post at its Port Huron facility, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."